



September 10, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 12-3

Dear Ms. Dortch:

Today, Brian Frederick, Executive Director of Sports Fans Coalition; John Breyault, Vice President of Public Policy, Telecommunications, and Fraud for the National Consumers League; and the undersigned met with Commissioner Jessica Rosenworcel and two of her advisors, Alex Hoehn-Saric and Holly Saurer. We presented an overview of the record in this proceeding and distributed the attached documents.

We focused on the harm to consumers resulting from leagues' blackout policies and the lack of economic support for the NFL's existing blackout practice. We also highlighted the NFL's recent decision to loosen its blackout policy in an attempt to decrease the number of local blackouts. We pointed out that the NFL cannot claim that blackouts are necessary to sustain the league's business model while simultaneously relaxing its blackout threshold. We also explained that ending the Sports Blackout Rule would eliminate a needless subsidy to an anti-consumer practice while likely having no effect on pay-TV providers' ability to circumvent local broadcast blackouts, largely due to restrictions in current compulsory copyright statutes.

Yesterday's blackout of a local Tampa Bay, Florida NFL game demonstrates that even under the NFL's new policy, blackouts persist. The Commission should consider eliminating or, in the alternative, establishing a two-year sunset of the Sports Blackout Rule so that at the very least, the League's anti-consumer practice is not subsidized by a Commission rule.

Sincerely,

/s/_____

David R. Goodfriend

cc: Alex Hoehn-Saric, Legal Advisor
Holly Saurer, Legal Advisor

Attachments

FCC Proceeding to Consider Eliminating the Sports Blackout Rule
**Summary of Comments and Replies by Sports Fans Coalition, Public Knowledge,
National Consumers League, Media Access Project, League of Fans**

- 1) The Commission should eliminate the sports blackout rule.
 - a. Unnecessary, anti-consumer public subsidy
 - b. Leagues should use private negotiations rather than public regulations
- 2) Fans, particularly elderly and disabled ones, oppose government policies supporting blackouts.
 - a. Many elderly, disabled cannot attend games in person and rely on TV
- 3) No compelling economic rationale supports sports blackouts
 - a. NFL has provided no actual evidence that blackouts significantly increase ticket sales
 - b. Top sports economists argue “no factual basis to the claim that the NFL would suffer a significant adverse effect”
- 4) Eliminating Sports Blackout rule will not migrate more sports to pay TV.
 - a. Claim is based on false premise that blackouts significantly affect attendance and revenues
 - b. Changing blackout policy will not alter relative attractiveness of broadcast or pay TV to the NFL
 - c. NFL and broadcasters trying to have it both ways: they say ending blackout rule would lead to migration of pro sports to cable, but NFL down-plays economic significance of blackouts
- 5) Blackouts won’t necessarily end if Commission eliminates Sports Blackout Rule
 - a. Compulsory copyright statutes curtail pay TV providers from carrying games
 - b. satellite providers prohibited from importing game from distant market
 - c. cable providers would have to pay six months of copyright fees for one game
 - d. Network non-duplication rule blocks blacked out games on broadcast networks
 - i. All free over-the-air games in NFL on Fox, NBC or CBS
 - e. Broadcasters would likely invoke retransmission consent to limit out-of-market use of their signals
- 6) Blackouts may end, however, if NFL forced to negotiate for them in free market
 - a. Leagues have contracts today with all major pay-TV providers and can bargain for blackout protection if they so choose.
 - b. NFL claims pay TV providers “likely would resist inclusion of any contractual alternative to sports blackout rule”
 - c. Why should government have to uphold leagues’ blackout policies, especially when they haven’t shown evidence of economic harm?
- 7) Commission should open rule-making proceeding
 - a. Top sports economists explain market has changed over four decades
 - b. compulsory copyright statutes and regulations have changed in four decades
 - c. thousands of fans have written in support of ending rule

**Limitations on Pay-TV Providers Importing an
Out-of-Market Broadcast Signal to
Provide Fans with a Locally Blacked Out Game**

	Cable Company	DISH Network	DIRECTV
Compulsory copyright statutory restrictions	Sec. 111 makes market-wide importation cost-prohibitive (rate of up to 3.75% of revenue; carriage could trigger payment for entire 6-month period)	If-Locals-No-Distant rule precludes distant network signals to all 210 DMAs served with locals by DISH, which includes major media markets with sports stadiums	If-Locals-No-Distants rule applies because DIRECTV provides locals in major media markets with sports stadiums. Only exception might be grandfathered distant network signal subscribers
Network Non-Duplication Rule applies?	Yes—any game on network broadcast cannot be imported	Yes	Yes
Retransmission consent limitations imposed by out-of-market broadcaster?	Probably—out-of-market station retransmission consent agreements likely restrict out-of-market use of signal	Probably	Probably

Fans' Comments (Excerpts)

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- *I'm a disabled Viet Nam vet. I also suffer from [Post Traumatic Stress Disorder, or "PTSD"]. I am unable to attend the Bills games because of my disabilities. I have been a fan for as long as I can remember. [Now] I am limited to where I go and what I can do. Watching the bills on TV is one thing I look forward to every year, as well as help me deal with PTSD. Please put all the games on TV for me and others who gave much of ourselves for our country.*
--Denis Steinmiller, North Tonawanda, NY
- *We are "old-time" football fans. We are also "old-timers" who are unable to attend games in person – you know -- "we're too old to cut the mustard anymore." So please put an end to the Sports Blackout Rule. We really want to see the games on our TV at home -- full stadium or not. We aren't watching the fans at the stadium, we're watching the game and the team we love. GO BILLS! Thanks!*
--William and Elaine Jackson, Orchard Park, NY
- *It's time to end to the Sports Blackout Rule. For people like me, who are disabled, this blackout rule is discrimination to people with disabilities. I CANNOT physically attend a live game at any arena. I am stuck at home with only the television to bring me the sports, or anything else, I enjoy watching. . . . The NFL blackout policy from the 70's do[es] not reflect the times of today. Technology has changed. [The] NFL's market has changed. Where do they think all that money comes from? It is US, the consumer who buys the products from their advertisers. It is US the taxpayer, who built most of the arenas. It is US the American citizen who continues to foot the bill We the people have had enough, and I am tired of being discriminated against by big greedy business.*
--Mary Bash, Masaryktown, FL